Supreme Court, U.S.
FILED

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No.

IN THE

# *Supreme Court of the United States*

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MICHAEL CLARK,

*Petitioner*

V.

THE PEOPLE OF THE STATE OF ILLINOIS

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On Petition For Writ Of Certiorari
To The Appellate Court of Illinois First Judicial District

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ELAINE ODEH
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32pp

## QUESTION PRESENTED

Whether 730 ILCS 5/5-8-4(A) which mandates consecutive sentencing "for offenses which were committed as part of a single course of conduct during which there was no substantial change in the nature of the criminal objective" violates a defendant's right to due process and trial by jury by subjecting a defendant to increased punishment without notice or a jury finding of proof beyond a reasonable doubt that the offenses were committed as part of a single course of conduct during which there was no substantial change in the nature of the criminal objective..

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## Opinions Below

Judgment and sentence entered in The Circuit Court of Cook County on September 4, 1996. (96-3331Consol., Vol4, R.G-33)

Sentence affirmed by the Illinois Appellate Court affirmed the sentence on September 14, 2001.(Docket No. 1-00-0332)

Petition for leave to appeal to Illinois Supreme Court denied on February 6, 2002.(Docket No. 92604)

## JURISDICTION

A judgment of conviction was entered and the Petitioner was sentenced in The Circuit Court of Cook County on September 4, 1996. The decision appears at Appendix B

The Illinois Appellate Court affirmed the sentence on September 14, 2001. The order appears at Appendix A

A timely petition for leave to appeal to the Illinois Supreme Court was denied on February 6, 2002. The order appears at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. §12579(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; not shall private property be taken fro public use, without just compensation. **U.S. Const. Amend. V**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense. **U.S. Const. Amend. VI**

**730 ILCS 5/5-8-4(A)** Concurrent and Consecutive Terms of Imprisonment . . . . . Appendix D

**720 ILCS 5/12-14** Aggravated Criminal Sexual Assault . . . . . Appendix E

## STATEMENT OF THE CASE

Petitioner Michael Clark was charged in Indictment No. 95 CR 30761 with 35 counts of Aggravated Criminal Sexual Assault, four counts of Armed Violence, five counts of Criminal Sexual Assault, six counts of Aggravated Criminal Sexual Abuse and one count of Unlawful Restraint. (96-3331 Consol.,C.L.14-66) Following a bench trial the Petitioner was found guilty of 21 Counts of the charged offenses. (96-3331 Cosol., Vol 4, R. G-33)

On September 4, 1996 the Petitioner was sentenced to 24 years imprisonment on each of three separate counts of aggravated criminal sexual assault, for a total of 72 years. (96-3331 Consol., Vol 5, R. H 96-99) All of the remaining counts merged into these three.

At the time of sentencing, the trial court made the factual finding that since the three separate counts were part of the same course of criminal conduct during which there was no substantial change in the nature of the criminal objective the statute required consecutive sentencing.(96-3331 Consol., Vol 5, R. H 96-97)

The Petitioner filed a timely notice of appeal from the judgment in open court. (96-3331 Consol., C.L. 4)

The Illinois Appellate Court First Judicial District affirmed the judgment by summary order on October 14, 1997. (98-4658 Consol., C.L. 65) On August 3, 1998, the Petitioner filed a *pro se* verified petition for post conviction relief. (Id., C.L. 91, 96) The lower court

dismissed the petition by written order on October 23, 1998. (Id., C.L. 70) The Petitioner took a timely appeal on November 17, 1998. (C.L. 88) The Illinois Appellate Court denied Petitioner relief on his appeal from the dismissal on December 23, 1998.

On December 2, 1999, the Petitioner filed a second *pro se* motion for post conviction relief, alleging various constitutional violations. (C.L. 15, et.seq.) On December 16, 1999, the court dismissed the motion. ( C.L. 89) On January 6, 2000, the Petitioner filed a timely notice of appeal to the Illinois Appellate Court (C.L. 13) and on September 14, 2001 the Illinois Appellate Court affirmed the dismissal. (C.L. 97) The Petitioner filed a timely notice of appeal to the Illinois Supreme Court and on February 6, 2002 the court denied his petition for leave to appeal.

## REASONS FOR GRANTING THE WRIT

The Illinois Court of Appeals has decided an important question of federal law in a way that conflicts with relevant decisions of the United States Supreme Court.

The statute at issue requires the imposition of consecutive sentences where a defendant is convicted of aggravated criminal sexual assault and the various counts of the offense are committed as part of a single course of conduct during which there is no substantial change in the nature of the criminal objective. **730 ILCS 5/5-8-4(a)** (West 1998).

Such a sentencing scheme violates a defendant's fifth and sixth amendment rights.

The Illinois statute does not require the factual question of whether "the offenses were committed as part of a single course of conduct during which there was no substantial change in the nature of the criminal objective" be plead in the charging instrument, submitted to the jury, or proved beyond a reasonable doubt. Rather, the trial court makes a factual determination on that issue. Once the court makes that determination, the permissible range of penalties is significantly increased if the defendant is convicted, because the defendant is then subjected to mandatory consecutive sentences.

In ***Apprendi v. New Jersey*** 530 U.S. 466 this Court found that the Constitution requires any fact increasing the prescribed range of penalties for an offense, other than the fact of a prior conviction, must be submitted to the jury and proved beyond a reasonable doubt. ***Apprendi***

involved the constitutionality of a New Jersey hate crimes statute, which subjected a defendant to an increased penalty upon a finding by the sentencing court by a preponderance of the evidence that the offense was racially motivated.

Building on it's prior decision in ***People v. Jones*** (1999) 526 U.S. 227, which found fifth and sixth amendment violations in a statute subjecting a defendant to increased punishment based on a bench finding of severe bodily injury, this Court determined in ***Apprendi*** that the increased penalty upon a bench finding of racially motivated similarly violated a defendant's rights to due process and jury trial.

It is permissible for judges to exercise discretion in imposing a sentence within the statutory range based on consideration of factors related to both the offense and the offender 530 U.S. at 481 If, however, a defendant faces punishment more sever than the statutory maximum he would receive if punished according to the facts reflected in the jury verdict alone, the facts that increased the penalty for the crime must be submitted to a jury and proved beyond a reasonable doubt. Id at 490 Lacking these safeguards, this court concluded the New Jersey statute in ***Apprendi*** was unconstitutional.

In this case, the indictment gave the Petitioner, Michael Clark, no notice that he qualified for mandatory consecutive sentences upon a factual finding that the various counts "were committed as part of a single course of conduct during which there was no substantial change in the nature of the criminal objective"; the Sate was never required to prove beyond a reasonable doubt

that he acted "in a single course of criminal conduct during which there was no substantial change in his criminal objective"; and, he was not afforded the right to have a jury decide if he acted "in a single course of conduct during which there was not substantial change in the nature of his criminal objective".

The Illinois statute **730 ILCS 5/5-8-4(a)**, therefore, is unconstitutional.

## CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

MICHAEL CLARK,

By: Elaine Odeh
ELAINE ODEH

Date: April 22, 2002

Appendix A

SIXTH DIVISION
September 14, 2001

No. 1-00-0332

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|---|---|---|
| THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, | ) | Appeal from the Circuit Court of Cook County. |
| v. | ) | No. 95 CR 30761 |
| MICHAEL CLARK, Defendant-Appellant.) | ) | The Honorable Stuart E. Palmer, Presiding Judge. |

# Order

This is an appeal from the dismissal of defendant's second *pro se* postconviction petition. On appeal, defendant raises the following issues: (1) whether the trial court erred in dismissing his untimely filed second postconviction petition; and (2) whether the mandatory consecutive sentencing provision of section 5-8-4(a) of the Unified Code of Corrections (730 ILCS 5/5-8-4(a) (West 1998)) violates his rights to due process and trial by jury. For the reasons that follow, we affirm.

## I. BACKGROUND

Following a bench trial, defendant was found guilty of multiple counts of aggravated criminal sexual assault. On September 4, 1996, the trial court sentenced defendant to 24 years' imprisonment on each of three separate counts of aggravated criminal sexual assault, each sentence to run consecutively for a total of 72 years' imprisonment. We affirmed the conviction on direct appeal. See People v. Clark, No 1-96-3331(October 4, 1997). Thereafter, defendant filed a petition for leave to appeal to the Illinois Supreme Court, which was denied on February 4, 1998. Defendant filed a *pro se* postcoviction petition on August 7, 1998, which was dismissed by the circuit court as frivolous and patently without merit pursuant to section 5/122-2.1(a)(2) of the Post-Conviction Hearing Act. (725 ILCS 5/122-1 et seq. (West 1998)) on October 23, 1998. A notice of appeal from the denial of postconviction relief was filed on November 17, 1998, and the Office of the State Appellate Defender was appointed to represent the defendant in that appeal. Defendant's counsel thereafter filed a motion to withdraw pursuant to Pennsylvania v. Finley, 481 U.S. 441, 95 L.Ed. 2d 539, 107 S. Ct. 1990 (1987), which was allowed on December 23, 1999. See People v. Clark, No. 1-98-4658 (December 23, 1999). Prior thereto, defendant filed a *pro se* motion to withdraw his appeal, which was also granted on December 23, 1999.

Defendant filed a second pro se petition for postconviction relief on December 7, 1999, in which he alleged due process violations by the admission of the victim's out-of-court statements, a partial trier of fact, improper impeachment of a defense witness, and discovery violations, excessive sentence, and ineffective assistance of trial and appellate counsel. In his memorandum of law, which he attached to the petition, defendant alleged that while some of his claims could have been presented I the direct appeal, fundamental

fairness should allow these claims to be considered. Defendant alleged that he should be allowed to file a second postconviction petition where the law clerk who prepared his first petition did not have enough time to prepare it, and therefore, failed to review the transcripts in an orderly fashion and failed to present all constitutional claims. ON December 16, 1999, the trail court dismissed the second petition on the found that the petition failed to state any valid reasons which would allow the filing of a second postconviction petition. A notice of appeal was filed on January 6, 2000.

## II. DISCUSSION

Defendant contends that the court erred in dismissing his second collateral attack on his conviction and sentence. He asserts that fundamental fairness requires the relation of the rules of waiver and *res judicata* and the statute of limitations when the alleged ineffective assistance of trial and appellate counsel prevented review of certain issues including excessive sentencing during prior proceedings.

Section 122-1(c) of the Post Conviction Hearing Act (725 ILCS 5/122-1(c) (West 1998)) provide that no proceedings may be commenced:

> "more than 6 months after the denial of a petition for leave to appeal or the date for filing such a petition if none is filed or more than 45 days after the defendant files his or her brief in the appeal of a sentence before the Illinois Supreme Court (or more than 45 days after the deadline for the filing of the defendant's brief with the Illinois Supreme Court if no brief is filed) or 3 years from the date of conviction, whichever is sooner." 725 ILCS 5/122-1(c) (West 1998).

A defendant who files after the applicable time period has expired must allege facts demonstrating that the delay was not due to his culpable negligence. See 725 ILCS 5/122-1(c) (West 1998)); People v. Lopez, 317 Ill. App. 3d 1047, 1052-53 (2000).

Pursuant to section 122-1(c), defendant was required to file his petition for postconviction relief no later than August 4, 1998. Defendant met this requirement with respect to the filing of his first *pro se* postconviction petition[1]. However, defendant's second *pro se* postconviction petition was filed on December 7, 1999, 16 months after the expiration of the statute of limitations. Because defendant's second petition was filed after the limitations period had expired, he must also allege facts demonstrating that the delay was not due to his culpable negligence. See 725 ILCS 5/122-1(c) (West 1998)); People v. Lopez 317 Ill. App. 3d 1047, 1052-53 (2000). After reviewing the petition, the court found no valid reasons to allow the filing of the second petition.

We agree with the court's conclusion. Defendant has failed to allege sufficient facts to support a claim that a lack of culpable negligence should excuse the late filing.[2] The fact that defendant chose to rely on

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[1] The verified date of mailing of defendant's first post-petition was August 3, 1998, and thus is within the statute of limitations. Se People v. Saunders, 261 Ill. App. 3d 700

[2] Illinois courts have been divided as to whether a trial court may summarily dismiss a postconviction petition solely on the grounds of untimeliness. This issue is currently being considered by the supreme court in the following consolidated appeals from the Fourth and Fifth Appellate Districts: People v. Johnson, 189 Ill. 2d 694(2000); People v. McClain, 189 Ill. 2d 696 (2000); and People v. Boclair, 189 Ill. 2d 690 (2000). However, in the recently decided case of People v. Lopez, 317 Ill. App. 3d

personnel at the penitentiary to review his case is of no moment. Indeed, "[r]eliance on advice of counsel does not constitute a lack of 'culpable negligence' sufficient to excuse an untimely filing of a post-conviction petition." People v. Rissley, No. 82536, slip op. at 11 (March 15, 2001). Moreover, the law is clear that there is no reason to believe that a *pro se* petitioner is incapable of alleging facts which demonstrate a meritorious constitutional claim. See People v. Ross, 139 Ill. App. 3d 674 (1985). The claims presented in a postconviction petition need not be supported by citation to legal authority or argument, but need only set forth the specific manner in which petitioner's rights were violated. See Ross, 139 Ill. App. 3d at 678.

Nevertheless, defendant relies on People v. Flores, 153 Ill. 2d 264 (1992), for the proposition that procedural bars must five way where the proceedings on the initial petition were deficient in some fundamental way. In Flores, defendant was convicted of armed robbery and murder and sentenced to death. See Flores, 153 Ill. 2d at 271. After defendant's counsel in the direct appeal and on appeal from the denial of defendant's first postconviction petition was withdrawn, the Illinois Supreme Court appointed new counsel for defendant, who then filed a second postconviction petition because he believed that prior counsel had failed to raise meritorious issues. See Flores, 153 Ill. 2d at 273. One of the issues raised by defendant's new counsel in the second postconviction petition was ineffective assistance of appellate counsel. See Flores, 153 Ill 2d at 273. The

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1047, 1052-53 (2000), this court held that the "unique language" found in the Act "makes it possible for a trial court to summarily dismiss an untimely petition where the defendant has not sufficiently alleged a lack of culpable negligence".

State argued that those issues should be barred by waiver and *res judicata* because they could have been raised in the first postconviction petition.[3] The supreme court disagreed. The court noted that although the rules of waiver and *res judicata* generally contribute to the finality of criminal litigation, "where fundamental fairness so requires, strict application of procedural bars may be relaxed." Flores, 153 Ill.2d at 274. The court stated,

> "the claimed error is one which could not have been presented in an earlier proceeding, procedural bars may be ineffectual in bringing about the finality which ordinarily follows direct appeal and the first post-conviction proceeding." Flores 153 Ill. 2d at 275.

Applying that reasoning to the facts before it, the supreme court concluded:

> "Obviously, because defendant's ineffective assistance claims concern errors which allegedly occurred on direct appeal and in the first post-conviction proceeding, and are asserted against the attorney who represented defendant in those proceedings, defendant's present claims *could not have been raised in those prior proceedings*. Thus, defendant's

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[3] Section 122-3 of the Post-Conviction Hearing Act provides "[a]ny claim of substantial denial of constitutional rights not raised in the original or an amended petition is waived." 725 ILCS 5/122-2 (West 1998)). Additionally, a "ruling on a post-conviction petition has *res judicata* effect with respect to all claims that were raised or could have been raised in the initial petition." People v. Free, 122 Ill.2d 367, 376 (1989).

ineffectiveness claims are neither *res judicata* [citations] not waived [citations]." (Emphasis in original). Flores, 153 Ill. 2d at 275.

Defendant's case is distinguishable from Flores. First, it is not the operation of the rules of waiver or *res judicata* which precludes review of defendant's second prostconviction petition, which was the issue in Flores. Rather, it is the operation of the statute of limitation. No amount of ineffective assistance of trial or appellate counsel played a role in the untimely filing of defendant's second postconviction petition. And, even if defendant suffered ineffective assistance of postconviction counsel that fact is of no moment. As pointed out in Flores:

> "Because the right to counsel in post-conviction proceedings is derived from statute rather than the Federal or State Constitutions, post-conviction petitioners are guaranteed only the level of assistance provided for by the [Post-Conviction Hearing] Act. That assistance has been defined by this court to mean a 'reasonable' level of assistance.[Citations] Consequently, a petitioner cannot claim sixth amendment ineffective assistance of counsel in such proceedings. [Citations] Therefore, because the [Post-Conviction Hearing] Act was designed to address only deprivations of constitutional magnitude, a petitioner's claim of ineffective assistance of post-conviction counsel at a prior proceeding does not present a basis upon which relief may be granted under the Act." Flores, 153 Ill. 2d at 276.

The only way for defendant to avoid the effect of the statute of limitations on his untimely filed second

postconviction petition, is to have alleged sufficient fact showing that the delay in filing was not due to his culpable negligence. See People v. Harrison, 32 Ill. App. 3d 641 (1975). He failed to meet that burden.

Second, this case is further distinguishable from Flores because here defendant had the benefit of the attorney of his choice at trial, of a different attorney for the direct appeal, and of review of his first petition at the appellate court level by yet another attorney. In Flores, the reason the supreme court found that defendant's ineffective assistance claims could not have been raised in the first prostconvition petition was because the attorney who prepared that petition was the same attorney against whom the claims were later asserted. See Flores, 153 Ill. 2d at 281-82. That is simply no the case here.

Accordingly, we hereby conclude that the trial court properly dismissed defendant's second *pro se* postconviction petition.

Finally, defendant asserts that even if we affirm the trial court's dismissal of his postconviction petition, we must determine the impact of Apprendi v. New Jersey, 530 U.S. 466, 147 L. Ed. 2d 435, 120 S. Ct. 2348 (2000) upon his consecutive sentences. However, our supreme court has recently determined that Apprendi concerns are not implicated by consecutive sentencing. See People v. Wagener, 196 Ill. 2d 269, 279-80 (2001). Accordingly, we find defendant's argument without merit.

## II. CONCLUSION

Bases on the foregoing, we hereby affirm the dismissal of defendant's second *pro se* postconviction petition.

Affirmed.

Buckley, J., with Frossard and O'Brien, JJ., concurring.

Appendix B

STATE OF ILLINOIS )
) SS:
COUNTY OF COOK )

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT-CRIMINAL DIVISION

| | | |
|---|---|---|
| THE PEOPLE OF THE STATE OF ILLINOIS | ) | Indictment No. 95 CR 30761 |
| | ) | Before: JUDGE |
| vs | ) | STUART PALMER |
| | ) | Wednesday, |
| MICHAEL CLARK | ) | September 14, 1996 |

Court having reconvened pursuant to adjournment.

APPEARANCES:

HON. JACK O'MALLEY,
State's Attorney of Cook County, by
Ms. ROSEANNE McDONNELL and
MR. KEVEN BYRNE,
Assistant Stat's Attorney,
Appeared on behalf of the People;

Mr. MIKE FABING,
Appeared on behalf of the Defendant;

Arnette W. Washington
Official Court Reporter
2650 South California
Chicago, Illinois 60608

With regard to the question of consecutive sentences, I believe the statute requires that in this case, consecutive sentences be imposed. The statute in section 5-8-4 specifically provides that - - well, specifically provides that there are not to be consecutive sentences for offenses committed as part of a single course of conduct during which there was no substantial change in the nature of the criminal objective. But it also says unless for one of the offenses for which the defendant was convicted was a Class X or Class One Felony and the defendant inflicted sever bodily harm or where the defendant was convicted of a violation, among other things, section 12-14. This was a single course of conduct, that's clear. But, the defendant has been convicted of several Class X felonies. And he has been convicted of violating in several instances section 12-14. And, therefore, I believe that the consecutive sentencing provisions require consecutive sentence in this case.

I have looked at all of the counts for which conviction has been entered, there's been a finding of guilty on. And I have grouped then as follows. While I believe that consecutive sentencing has to be imposed in this particular case, there are certain counts that refer to the same single act. And I group them accordingly. Counts 1,2,3,16,21,26 and 27 are all aggravated criminal sexual assault counts that refer to conduct involving the defendant's penis - - the defendant's penis and the complainant's mouth. And I have grouped them together for the purposes of sentencing. Counts 4, 5 and 6, 17, 22, 28, 29, all involve an act of conduct between the defendant's penis and the victim's anus. And I have grouped then together for the purposes of sentencing.

Counts 7, 8, 9, 18, 23, 30, 31, all involve aggravated sexual - - aggravated criminal sexual assault involving the defendant's penis and the complaining witnesses vagina. And I have grouped them together for the purposes of sentencing. I believe that the appropriate

way to handle this matter is to impose a sentence with regard to one of the court s for each of those groups consecutively. And that all the rest of the charges will merge.

It is, therefore, my position, and my position is that I agree with the State. That the minimum sentence allowable under the law with regard to this matter would be 18 years, 6 years times 3. And that the maximum sentence would be 90 years, 30 years times 3.

Further discussing the question of consecutive sentences, although I believe they are required in the statute, I further feel that based on the nature and circumstances of the offense, and the history and character of the defendant, that consecutive sentencing is warranted and correct for the purposes of protecting the public. As I said, I believe that the minimum sentencing range in this case is 18 years and the maximum is 90 years. I believe that bases on the facts and circumstances of this case and the defendant's prior criminal history, a sentence is required in the upper range of those figures.

Taking into further consideration the defendant's conduct while incarcerated waiting for trial, I believe that the sentence should even be higher than that. I t is very clear now that we were at the - - we're at this point in these proceedings that the defendant is a dangerous individual. And is capable of inflicting harm on the public. And I think that the public needs protection in that regard. All I can do with regard to that is to sentence accordingly.

It's also clear that even while incarcerated, the defendant is a dangerous individual. And it's up to the corrections official to do the best they can in that regard. With regard to count 16 which is the offense of aggravated criminal sexual assault, the defendant is hereby sentenced to 24 years, Illinois Department of Correction. All the other counts in that group that I have previously mentioned will merge.

With regard to count 17 which Is the offense of aggravated criminal sexual assault, the defendant is sentenced to 24 years, Illinois Department of Corrections, consecutive to count 16. All the other counts in the group of count 17 merge.

With regard to count 18, offense of criminal - - aggravated criminal sexual assault, the defendant will be sentenced to 24 years, Illinois Department of Corrections, to be served consecutive to count 17 and count 16. All the other counts in that group that I have made will merge.

In addition, all the counts of armed violence, aggravated criminal sexual abuse, aggravated unlawful restraint and unlawful restraint will merge. Defendant's total sentence which I calculate to be 61 years 2 months and 12 days.

(96-3331 Consol., Vol 5 R. H95-99)

Appendix C

SUPREME COURT OF ILLINOIS
CLERK OF THE COURT
92604 SUPREME COURT BUILDING
SPRINGFIELD, ILLINOIS 62701
(217) 782-2035

February 6, 2002

Ms. Donna Hickstein-Foley
Foley and Foley
9644 South Hamilton Avenue
Chicago, IL 60643-1631

No. 92604 People State of Illinois, respondent, v. Michael Clark, petitioner. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on February 28, 2002.

Appendix D

730 ILCS 5/5-8/4 Concurrent and Consecutive Terms of Imprisonment

(a) When multiple sentences of imprisonment are imposed on a defendant at the same time, or when a terms of imprisonment is imposed on a defendant who is already subject to sentence in this State of in another state, or for a sentence imposed by an district court of the Untied States, the sentences shall run concurrently or consecutively as determined by the court. When a term of imprisonment is imposed on a defendant by an Illinois circuit court and the defendant is subsequently sentenced to a term of imprisonment by another state or by a district court of the United State, the Illinois circuit court which imposed the sentence my order that the Illinois sentence be made concurrent with the sentence imposed by the other state or district court of the United States. The defendant must apply to the circuit court within 30 days after the defendant's sentence imposed by the other state or district of the United States is finalized. The court shall not impose consecutive sentences for offenses during which there was no substantial change in the nature of the criminal objective, unless:

(i) one of the offenses for which defendant was convicted was first degree murder or a Class X or Class 1 felony and the defendant inflicted severe bodily injury, or:

(ii) the defendant was convicted of a violation of Section 12-13, 12-14, or 12-14.1 of the Criminal Code Of 1961 , or

(iii) the defendant was convicted of armed violence based upon the predicate offense of solicitation of murder, solicitation of murder for hire, heinous battery, aggravated battery of a senior citizen, criminal sexual assault, a violation of subsection (g) of Section 5 of

the Cannabis Control Act, cannabis trafficking, a violation of subsection(a) of Section 401 of the Illinois Controlled Substances Act, controlled substance trafficking involving a Class X felony amount of controlled substance under Section 401 of the Illinois Controlled Substances Act, calculated criminal conspiracy,
in which event the court shall enter sentences to run consecutively. Sentences shall run concurrently unless otherwise specified by the court.

child, shall be sentenced to a term of natural life imprisonment. The commission of the second or subsequent offense is required to have been after the initial conviction for this paragraph (2) to apply.

(b) The accused commits aggravated criminal sexual assault if the accused was under 17 years of age and (i) commits an act of sexual penetration with a victim who was under 9 years of age when the act was committed; or (ii) commits an act of sexual penetration with a victim who was at least 9 years of age but under 13 years of age when the act was committed and the accused used force or threat of force to commit the act.
(c) The accused commits aggravated criminal sexual assault if he or she commits an act of sexual penetration with a victim who was a severely or profoundly mentally retarded person at the time the act was committed.
(d) Sentence.
(1) Aggravated criminal sexual assault in violation of paragraph (1), (2), (3), (4), (5), (6), or (7) of subsection (a) or in violation of subsection (b) or (c) is a Class X felony. A violation of subsection (a)(8) is a Class X felony for which 15 years shall be added to the term of imprisonment imposed by the court. A violation of subsection (a)(9) is a Class X felony for which 20 years shall be added to the term of imprisonment imposed by the court. A violation of subsection (a)(10) is a Class X felony for which 25 years or up to a term of natural life imprisonment shall be added to the term of imprisonment imposed by the court.
(2) A person who is convicted of a second or subsequent offense of aggravated criminal sexual assault, or who is convicted of the offense of aggravated criminal sexual assault after having previously been convicted of the offense of criminal sexual assault or the offense of predatory criminal sexual assault of a child, or who is convicted of the offense of aggravated criminal sexual assault after having previously been convicted under the laws of this or any other state of an offense that is substantially equivalent to the offense of criminal sexual assault, the offense of aggravated criminal sexual assault or the offense of predatory criminal sexual assault of a

720 ILCS 5/12-14 Aggravated Criminal Sexual Assault
(a) The accused commits aggravated criminal sexual assault if he or she commits criminal sexual assault and any of the following aggravating circumstances existed during, or for the purposes of paragraph (7) of this subsection (a) as part of the same course of conduct as, the commission of the offense:
(1) the accused displayed, threatened to use, or used a dangerous weapon, other than a firearm, or any object fashioned or utilized in such a manner as to lead the victim under the circumstances reasonably to believe it to be a dangerous weapon; or
(2) the accused caused bodily harm, except as provided in subsection (a)(10), to the victim; or
(3) the accused acted in such a manner as to threaten or endanger the life of the victim or any other person; or
(4) the criminal sexual assault was perpetrated during the course of the commission or attempted commission of any other felony by the accused; or
(5) the victim was 60 years of age or over when the offense was committed; or
(6) the victim was a physically handicapped person; or
(7) the accused delivered (by injection, inhalation, ingestion, transfer of possession, or any other means) to the victim without his or her consent, or by threat or deception, and for other than medical purposes, any controlled substance; or
(8) the accused was armed with a firearm; or (9) the accused personally discharged a firearm during the commission of the offense; or
(10) the accused, during the commission of the offense, personally discharged a firearm that proximately caused great bodily harm, permanent disability, permanent disfigurement, or death to another person.